

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**PHILIP D. LAWRENCE**

Claimant

VS.

**ROADWAY EXPRESS INC.**

Respondent

Self-Insured

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Docket No. 244,707

**ORDER**

Claimant appeals Administrative Law Judge Robert H. Foerschler's November 7, 2000, Preliminary Decision.

**ISSUES**

After the October 19, 2000, preliminary hearing, the Administrative Law Judge entered the November 7, 2000, Preliminary Decision, that is the subject of this appeal. At the preliminary hearing, claimant requested medical treatment and temporary total disability benefits, alleging that he slipped and fell down a flight of stairs while employed by the respondent. As a result of the fall, claimant alleges he suffered trauma to his chest that exacerbated a preexisting heart condition, causing claimant congestive heart failure. Immediately following the February 17, 1999, accident, claimant requested workers' compensation benefits, and respondent denied the claim. At the preliminary hearing, respondent again denied claimant's request for workers' compensation benefits, contending that claimant did not suffer an accidental injury that arose out of the employment with respondent.

On appeal, claimant, in the Petition for Review, raised the issue of whether claimant's accidental injury arose out of and in the course of the employment with respondent. Claimant did not file a brief before the Appeals Board. Thus, the Appeals Board does not have the benefit of claimant's arguments concerning this issue.

The Administrative Law Judge's Preliminary Decision does not address the issue of whether claimant's accidental injury arose out of the employment with respondent. In the Preliminary Decision, the Administrative Law Judge only appoints a neutral physician,

pursuant to K.S.A. 2000 Supp. 44-516, to review claimant's medical treatment records, examine claimant, if necessary, and then express an opinion on the origin and development of claimant's current heart problem. In the Preliminary Decision, the Administrative Law Judge concludes that the issues raised at the preliminary hearing remain under consideration pending the receipt of the neutral physician's report. After receipt of the report, the parties may make additional arguments and comments to the Administrative Law Judge.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the preliminary hearing record, and considering the arguments contained in the respondent's brief, the Appeals Board finds claimant's appeal should be dismissed.

The Appeals Board only has jurisdiction to review "[a]ll final orders, awards, modifications of awards, or preliminary hearing awards under K.S.A. 44-534a and amendments thereto made by an administrative law judge . . . ." <sup>1</sup> Although the subject Preliminary Decision resulted from a preliminary hearing, the Preliminary Decision does not address any of the specific jurisdictional issues contained in the preliminary hearing statute that grants the Appeals Board jurisdiction to review a preliminary hearing order. <sup>2</sup> In the Preliminary Decision, the Administrative Law Judge only appoints a neutral physician to review medical treatment reports, examine the claimant and report to the Administrative Law Judge his opinion on causation.

The Appeals Board finds that the decision of the Administrative Law Judge to appoint a neutral physician to provide an examination of the claimant is interlocutory in nature and made during the litigation of a workers' compensation case. This is not a final order that can be reviewed pursuant to K.S.A. 2000 Supp. 44-551(b)(1). The Administrative Law Judge's order that is now before the Appeals Board pertains to an interlocutory matter, ordering a neutral physician examination, which the Administrative Law Judge has the authority to order during the litigation of a workers' compensation case.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Petition for Review filed by the claimant is dismissed, as the Appeals Board lacks jurisdiction to review Administrative Law Judge Robert H. Foerschler's Preliminary Decision that appointed a neutral physician to examine the claimant.

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<sup>1</sup> See K.S.A. 2000 Supp. 44-551(b)(1).

<sup>2</sup> See K.S.A. 2000 Supp. 44-534(a)(2).

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of January 2001.

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BOARD MEMBER

c: Jack M. N. Shelton, Topeka, KS  
Wade A. Dorothy, Lenexa, KS  
Robert H. Foerschler, Administrative Law Judge  
Philip S. Harness, Director